IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1210 of 1996

in

SPECIAL CIVIL APPLICATIONNo 3133 of 1995

with

LETTERS PATENT APPEAL NO.1310 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 3133 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RASIKLAL CHANDULAL SHAH

Versus

CENTRAL AEXCISE & CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI, for Appellants

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE
Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals which are filed under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No. 3133 of 1995. As the appeals involve determination of common questions of facts and law, we propose to dispose them of by this common judgment.

#. The appellants in Letters Patent Appeal No.1210 of 1996 are original petitioners. They are owners of Block No.3 of Stadium House, Navrangpura, Ahmedabad. It was let out to Central Excise and Customs Department by a lease deed dated June 15, 1975. The area let out admeasured 121.15 sq. metres and rent agreed to be paid was Rs.1.25 per sq. feet. The lease was for a period of five years and it expired on June 15, 1980. Though the lease was terminated by the owners, no steps were taken by the respondents either to get the lease deed executed or to revise the rent in terms of office memorandum dated July 10, 1972. Meanwhile another office memorandum dated September 1, 1982 was issued by the Directorate of Estates, Government of India, stipulating that the rent should be got re-assessed from the Central Public Works Department on the expiry of period of five years from the date of original assessment and after every five years thereafter. No steps were taken by the original respondents either to revise the rent or to get the rent reassessed from Central Public Works Department ('CPWD' for short) for the period from September 1, 1982 to August 31, 1987. Even no steps were taken to get the rent reassessed for the period from 1987-92. It is the case of the original petitioners that the CPWD issued certificate dated December 7, 1993, reassessing the rent between Rs.6746/- and Rs.9073/- per month effective from September 1, 1992, but no steps were taken by the respondents to revise the rent in accordance with the said certificate. It was also the grievance of the petitioners that the Central Public Works Department by its certificate dated December 17, 1994 reassessed the rent of the premises between Fr.9163/- and Rs.10175/from September 9, 1993 for a period of five years, but no steps were taken by the respondents to revise the rent for the said period. Under the circumstances, the original petitioners instituted Special Civil Application No.3133 of 1995 and prayed the Court to direct the respondents to comply with and implement the certificates

dated December 7, 1993 and December 17, 1994, which were issued by the CPWD. The petitioners also prayed to direct the original respondents to pay rent difference on the basis of those two certificates.

#. On behalf of the respondents, an affidavit in reply was filed controverting the averments made in the petition. Therein, inter alia, it was averred that since the lease was not renewed after the expiry of initial period of lease, the office memoranda were not applicable to the facts of the case and petitioners were not entitled to revision of rent as indicted in the two certificates issued by CPWD. It was further pleaded that in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Court had no jurisdiction to entertain the petition filed under Article 226 and, therefore, the petition should be dismissed.

#. Mr. Sitaram Parmanand Delhiwala had filed an affidavit in rejoinder controverting the averments made in the reply and reiterating what was stated in the petition.

#. After hearing the parties, the learned Single Judge has directed the original respondents to fix rent of the premises at Rs.4298/- per month for the period from September 9, 1988 to August 31, 1992 and at the rate of Rs.7912/- per month from September 1, 1992 to September 8, 1993 and at the rate of Rs.9669/- per month for the period from September 9, 1993 to September 8, 1998 by the impugned judgment, giving rise to Letters Patent Appeal No.1310 of 1996 by the department. The original petitioners have filed Letters Patent Appeal No.1210 of 1996 challenging that part of the judgment by which they have been denied interest on arrears of rent which is directed to be paid by the impugned judgment.

#. We have heard learned counsel for the parties. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having

regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3133 of 1995, out of which Letters Patent Appeal No.1310 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to rent to Special Civil Application No.1398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of

valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The contention that determination of the rent on the basis of average of two figures mentioned in different certificates is erroneous and, therefore, the appeal should be allowed has no substance. It may be stated that in Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the learned Additional Central Government Standing Counsel informing him to bring to the notice of the Court instructions contained therein. By the said letter, it was made specifically clear that the department was agreeable to pay rent based on recognized principle of valuation as per Government's usual practice, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992. By the said letter, determination of rent was specifically left to the High Court. In view of the instructions contained in the letter dated March 19, 1996, there is no manner of doubt that the department had given consent before the learned Single Judge and the order was almost obtained by consent. Determination of rent for different periods on the basis of average of two figures mentioned in different certificates cannot be termed as illegal or unreasonable or arbitrary so as to warrant interference of this Court in the present appeal. The learned Judge has given cogent reasons as to why average of the two figures mentioned in the certificates for different periods should be taken as basis for determination of amount of rent. Those reasons are to be found in paragraphs 1 and 2 of the impugned judgment. In our view, it cannot be said that any error was committed by the learned Single Judge in determining the rent of the premises taking the average of two figures mentioned in different certificates. The determination being just and reasonable is hereby upheld.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1310 of 1996 and the same is liable to be dismissed.

##. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1210 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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